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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT
(COMMISSION DE VENISE)

87th PLENARY SESSION
Venice, Scuola Grande di San Giovanni Evangelista
Friday, 17 June 2011 (9.00 a.m.) -
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87^e SESSION PLÉNIÈRE
(Venise, vendredi 17 juin (9h00) -
samedi 18 juin 2011 (13h00))

SESSION REPORT
RAPPORT DE SESSION

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1. Adoption of the Agenda

The Agenda was adopted as it appears in document CDL-OJ(2011)002ann.

2. Communication du Président

M. Buquicchio informe la Commission de ses activités récentes qui sont listées dans le document [CDL\(2011\)029](#). Il indique qu'il s'est rendu en Ukraine dans le cadre des réformes constitutionnelle et judiciaire et de la future réforme de l'autonomie locale ; il a notamment rencontré le président, le président du parlement et les ministres des affaires étrangères et de la justice.

M. Buquicchio souhaite ensuite la bienvenue aux nouveaux membres : M. Young-Joon Mok membre coréen, Mme Anne Peters, membre suppléant pour l'Allemagne et M. Rafaâ Ben Achour, membre suppléant pour la Tunisie.

3. Communication by the Secretariat

M. Markert souligne que, parmi les événements qui ont eu lieu depuis la dernière session, il faut relever le XVe congrès de la Conférence des cours constitutionnelles européennes, qui s'est tenu à Bucarest du 23 au 25 mai 2011. A cette occasion, les statuts de la Conférence mondiale sur la Justice constitutionnelle ont été approuvés par le Bureau de la Conférence mondiale. La Commission de Venise a également participé au congrès fondateur de l'Association des cours et conseils constitutionnels africains, qui souhaite coopérer avec la Commission de Venise (Alger, 7-8 mai 2011). La Conférence des cours constitutionnelles des pays de langue portugaise souhaite coopérer avec la Commission dans le cadre d'un accord de coopération. En outre, la Commission a organisé, conjointement avec le ministère fédéral de l'Intérieur autrichien, la 8^e Conférence européenne des administrations électorales sur le thème « Les élections dans un monde qui change ». La conférence réunissait un grand nombre des représentants des autorités nationales responsables des élections (une trentaine de pays européens et non européens) et d'organisations internationales.

M. Markert rappelle également que la Commission de Venise a une implication grandissante dans la politique de voisinage du Conseil de l'Europe. Il précise à ce propos que les représentants marocains ne sont malheureusement pas présents à cette session car elle coïncide avec un moment crucial de la réforme constitutionnelle en cours au Maroc.

M. Markert informe enfin la Commission que le Secrétaire Général du Conseil de l'Europe a l'intention de proposer au Comité des Ministres un renforcement du secrétariat de la Commission de Venise. De plus, dans le cadre de la réforme du Conseil de l'Europe, plusieurs ambassadeurs ont émis le souhait que la Commission de Venise soit placée en dehors des directions générales, sous l'autorité directe du Secrétaire Général.

4. Co-operation with the Committee of Ministers

La Commission a un échange de vues avec trois représentants du Comité des Ministres.

L'Ambassadeur Aiga Liepina, Représentante permanente de la Lettonie, souligne le rôle irremplaçable du Conseil de l'Europe, notamment dans le contexte de conflits toujours présents sur le continent européen. Elle souligne la persistance de problèmes dans les mécanismes constitutionnels de plusieurs Etats et le besoin de conseil pour de tels Etats en vue du développement démocratique de leur culture politique. Elle souligne également que des pays tels que l'Albanie, l'Arménie, la Géorgie, l'Azerbaïdjan ou l'Ukraine, notamment, bénéficient d'une coopération régulière avec la Commission de Venise en matière électorale ; ces pays ont ainsi une haute estime de la Commission de Venise. La Lettonie soutient cette coopération.

L'Ambassadeur émet enfin l'espoir que le Bélarus remplira les critères démocratiques requis pour intégrer un jour le Conseil de l'Europe.

L'Ambassadeur Tomáš Boček, Représentant permanent de la République tchèque, évoque l'actuelle réforme du Conseil de l'Europe qui vise une plus grande efficacité de l'Organisation. Il rappelle que la place de la Commission de Venise au sein de ces nouvelles structures n'est pas encore décidée. L'Ambassadeur évoque ensuite le grand intérêt du Comité des Ministres pour les réformes dans les pays d'Afrique du Nord. L'Ambassadeur exprime enfin sa préoccupation face à la situation concernant la protection des droits de l'homme dans plusieurs Etats, notamment au Bélarus.

L'Ambassadeur Damjan Bergant, Représentant permanent de la Slovénie, souligne que les résultats de la Commission de Venise sont très appréciés par le Comité des ministres et exprime une appréciation particulière pour les activités réalisées par la Commission en Asie centrale tout comme celles en Afrique du nord, qui ont une importance particulière pour le développement de la politique de voisinage. L'Ambassadeur souligne enfin comme tous les Etats membres du Conseil de l'Europe, y compris les anciennes démocraties, auraient intérêt à demander l'assistance de la Commission de Venise.

5. Co-operation with the Parliamentary Assembly

La Commission tient un échange de vues avec les représentants de l'Assemblée parlementaire du Conseil de l'Europe, sur la coopération avec l'Assemblée.

Mme Anne Brasseur, membre de l'Assemblée parlementaire du Conseil de l'Europe (l'APCE), s'associe aux félicitations des ambassadeurs et félicite le travail du secrétariat avec une équipe aussi restreinte. Elle indique s'exprimer en tant que représentant du président de l'APCE, en tant que membre de la commission des questions politiques et en tant que rapporteur sur la situation en Tunisie. Elle rappelle que dans le cadre des travaux de la Commission politique, de nombreux dossiers sont communs avec les avis de la Commission de Venise, notamment la Tunisie. Elle indique également que le parlement du Maroc – état membre de la Commission de Venise depuis 2007 - a été le premier parlement à demander le statut de partenaire pour la démocratie auprès de l'APCE et qu'une Recommandation de l'APCE propose l'acceptation de ce statut. Deux ans après l'octroi de ce statut, une évaluation des progrès réalisés devra être effectuée. Concernant le Bélarus, Madame Brasseur indique que la situation n'est pas encourageante et qu'il y a une réelle préoccupation quant aux développements dans ce pays.

M. Holovaty informe la Commission des travaux de la Commission juridiques depuis le mois de mars. Il indique en particulier les débats tenus en plénière lors de la dernière session de l'APCE sur le dialogue interculturel, sur l'avenir de la Cour et sur la protection des minorités, ainsi que l'adoption d'un rapport sur le respect par la Géorgie de ses engagements.

6. Co-operation with the Congress of Local and Regional Authorities of the Council of Europe

As no member of the Congress participated in the session there was no discussion under this agenda item.

7. Follow-up to earlier Venice Commission opinions

The Commission was informed on follow-up to:

Joint Opinion by the Venice Commission and the OSCE/ODIHR on the revised draft law on financing political activities of the Republic of Serbia ([CDL-AD\(2011\)006](#))

The Commission was informed that on 13 June the parliament of the Republic of Serbia had adopted the law on financing political activities. According to the information received by the Commission, the new version of the law integrated a number of recommendations made in the Joint Opinion of the Venice Commission and the OSCE/ODIHR.

Joint opinion by the Venice Commission and the OSCE/ODIHR on the draft law on altering and amending the law on election of members of Parliament of the Republic of Serbia ([CDL-AD\(2011\)005](#)).

The Secretariat informed the Commission that on 26 May the parliament of the Republic of Serbia adopted amendments to the electoral legislation abolishing the practice of blank resignations of members of parliament. The new law also introduced the rule that should a seat in the parliament become vacant, it would be taken by the next candidate on the list. In the previous version of the law, political parties had the power to decide which candidate would take a vacant seat.

The Commission was informed that the change in the legislation did not affect the constitutional provision (paragraph 2 of Article 102) allowing the practice of blank resignations and that in the middle or long term an amendment to the Constitution of the Republic of Serbia seemed indispensable.

Interim Opinion on the Draft Amendments to the Law on Assembly and Manifestations of Georgia ([CDL-AD\(2010\)009](#));

The Commission was informed that on 18 April 2011, the Constitutional Court of Georgia partially admitted the constitutional complaint of the Public Defender of Georgia and found a number of the provisions of the Law of Georgia on Assembly and Manifestations and of the Code of Administrative Offences of Georgia currently in force unconstitutional. In particular, the Court annulled the blanket prohibition to demonstrate within 20 meters around several public buildings and the norm which provided for the immediate termination of a protest if it blocks a public thoroughfare or violates other requirements of the law. The Commission had previously criticised these provisions. It was expected that amendments to the law in force would be adopted shortly.

Interim joint opinion by the Venice Commission and the OSCE/ODIHR on the draft law on assemblies of the Republic of Armenia ([CDL-AD\(2010\)049](#)).

The Commission was informed that the amendments to the law had been adopted on 14 April 2011. They reflected several recommendations of the Venice Commission and the OSCE/ODIHR and contained several very positive features which were in line with the OSCE/ODIHR-Venice Commission guidelines on freedom of assembly. Some new amendments had been introduced, however, which appeared problematic, notably the possibility for the Minister of Culture to prevent a demonstration from taking place around a historical building.

8. Moldova

Amicus curiae brief on three questions related to Article 78 of the Constitution of the Republic of Moldova

Mr Bartole informed the Commission about the current situation in Moldova, where the political and institutional stalemate continued mainly on account of the constitutional provisions on the procedure for election of the President (Article 78), which require a majority of three-fifths of the

deputies to elect the President of the Republic, failing which the incumbent President dissolves the Parliament and sets a date for new elections.

A group of MPs had requested the Constitutional Court of Moldova to provide an interpretation of Article 78 of the Constitution. The Constitutional Court had addressed three questions to the Venice Commission relating in substance to the question as to whether it would be possible, by means of an organic law, to depart from the rule in Article 78§3.

In its *amicus curiae* brief, it was argued that a textual interpretation of Article 78 - that is, the requirement of a three-fifths majority also for the presidential elections organised after the early elections due to a first failure to elect the President - would be preferable. Indeed the most appropriate way of introducing a reform of this procedure was through a constitutional amendment, adopted in conformity with the procedure provided for by the Constitution itself. On the other hand, the Commission admitted that due to the fact that the Constitution of Moldova failed to provide guidance on how to deal with the current exceptional circumstances, a textual interpretation of Article 78 might bring unsatisfactory results because it would lead to repeating the same procedure all over again, and thus to a vicious circle of elections and dissolutions. The Commission was thus of the view that bearing in mind the incapacity of the Parliament to elect a compromise candidate for the Presidency and thus avoiding the continuation of the crisis, it might be appropriate to revert to a functional interpretation of the Constitution. Accordingly, it was up to the Constitutional Court of Moldova to decide whether, under the present circumstances in the country, it could be justified to move away from a textual interpretation of Article 78 of the Constitution and put the emphasis on the general constitutional context, enabling an organic law to regulate also the question of the majority requirement for the repeated election of the President.

Mr Tuori explained that within the working group different views had emerged on this issue. It had however been possible to agree on the possibility of a functional interpretation of Article 78, not only in the light of the emergency nature of the situation in Moldova, but also on the basis of the comparative experience of other countries whose constitutions provide for a progressive reduction of the majority requirement in case of the failure to elect the President the first time. Several members of the Commission shared this view, mentioning similar experiences in their respective countries. It was also pointed out that when there is a gap in the Constitution, as seems to be the case in Moldova, it is up to the Constitutional Court of the country to fill this gap in a way that serves the country and its population.

Mr Özbudun, who had chaired the meeting of the Sub-Commission on Democratic Institutions held on 16 June 2011, informed the Commission that the Sub-Commission had examined the draft *amicus curiae* and had discussed it in some detail. He expressed his reservations with regard to the functional interpretation, notably as it would enable the Constitution to be amended by means of an organic law.

The Venice Commission adopted the *Amicus curiae* brief for the Constitutional Court of Moldova on three questions related to Article 78 of the Constitution of Moldova with amendments (CDL-AD(2011)014).

9. Tunisie

M. Rafaâ Ben Achour, Ministre délégué auprès du premier Ministre et récemment nommé comme membre suppléant pour la Tunisie, informe la Commission des développements constitutionnels récents en Tunisie. Il rappelle les éléments historiques qui ont conduit à la révolution et au départ du président Ben Ali le 14 janvier 2011. Après cette date clef, la phase de transition a suivi et le 15 mars 2011 il a été décidé de suspendre la Constitution (avec la dissolution de la Chambre des députés et de la Chambre des représentants, du Conseil Economique et Social et du Conseil constitutionnel) et de procéder à l'élection d'une

assemblée nationale constituante. La date de ces élections a d'abord été fixé au 24 juillet 2011. Une institution *sui generis* est créée : la Haute Instance pour la réalisation des objectifs de la Révolution, de la réforme politique et de la transition démocratique dont la tâche essentielle est l'élaboration de la loi électorale pour l'élection de l'Assemblée nationale constituante. Plusieurs textes juridiques ont été adoptés, dont un décret-loi d'amnistie générale pour les crimes à mobile politique. En parallèle a été créée une commission nationale pour l'investigation de tels crimes et une commission d'enquête sur les abus commis pendant les manifestations et troubles qui ont conduit à la révolution.

La loi électorale a été adoptée après des discussions laborieuses, notamment sur l'Article 15 relatif à l'exclusion des candidatures à l'assemblée nationale constituante. L'Instance supérieure indépendante des élections (l'ISIE) a vu le jour le 18 mai 2011. Suite à l'annonce de l'ISIE de l'impossibilité d'organiser les élections le 24 juillet, le gouvernement transitoire les a reportées au 23 octobre 2011.

Mme Brasseur indique qu'en qualité de rapporteur sur la Tunisie pour l'APCE, elle s'est rendue en Tunisie en avril 2011. Elle soulève les problèmes cumulés de la sécurité intérieure, de la situation économique (le chômage élevé en particulier) et de l'émigration (avec les Tunisiens quittant le pays et des réfugiés affluant en Tunisie par ailleurs). Mme Brasseur souligne l'importance du développement de la démocratie et le facteur temps pour mettre en place de nouvelles structures démocratiques.

M. Gicquel, expert français ayant participé à deux missions pour la Commission, informe la Commission que la Haute Instance pour la réalisation des objectifs de la Révolution est en train d'élaborer notamment un pacte républicain pour bâtir de nouveaux fondements démocratiques. L'assemblée constituante exercera la plénitude du pouvoir tant du point de vue politique que juridique. Cette assemblée formera un gouvernement, le contrôlera et le cas échéant le censurera. Elle aura en outre un pouvoir normatif, notamment pour l'élaboration de la loi de finances afin d'assurer une continuité nationale. Le juriste ne doit bien sûr pas ignorer l'environnement politique dans cette période de transition et le consensus qui découlerait de ce pacte républicain. A la lumière de ces éléments, l'assemblée nationale constituante élaborera un projet de constitution qui sera soumis à référendum.

Plusieurs membres de la Commission interviennent. M. Bartole en particulier rappelle que l'Italie avait elle-même opté en 1946 pour une assemblée constituante. Il soulève en outre la question de l'institution qui serait susceptible de contrôler le respect des droits fondamentaux dans le cadre des institutions transitoires tunisiennes actuelles.

M. Gussetti, représentant la Commission européenne, annonce que le 20 juin, le Conseil des ministres de l'Union européenne va entériner la création d'un représentant spécial de l'Union européenne dans la région afin d'assurer la coordination des activités de l'Union dans cette région, y compris dans le domaine financier.

Le secrétariat informe la Commission des activités en cours et à venir en Tunisie. Une délégation a participé à un séminaire le 4 juin 2011 sur la transition démocratique en Tunisie et à cette occasion plusieurs rencontres avec des responsables tunisiens ont été organisées. La prochaine activité en Tunisie aura lieu à la fin du mois de juin lors d'un séminaire international sur l'égalité de genre ; ensuite du 5 au 8 juillet 2011 une délégation d'experts de la Commission de Venise va former les magistrats du tribunal administratif de Tunis, en charge du contentieux électoral dans le cadre de l'élection à venir de l'assemblée nationale constituante.

10. Egypt

Mr Sultan, President of Supreme Constitutional Court of Egypt, informed the Commission about the process that has led to the adoption of constitutional changes on 19 March 2011 by popular referendum. In early February, after the suspension of the 1971 Constitution of Egypt, the

Supreme Council of the Armed Forces appointed the Committee charged with proposing amendments to the constitution. The constitutional changes related *inter alia*, to full judicial supervision of parliamentary elections, from voters' registration to the publication of election results; the ability to declare and renew a state of emergency; and the procedure for drafting a new constitution through an indirectly elected Constitutional Assembly. Further to the referendum that approved the changes with 77 per cent of votes in favour, the Supreme Council of the Armed Forces adopted a Constitutional Declaration addressing, among others, the issues of the election of the president and of the lower house of parliament. The Declaration also recognises fundamental human rights and freedoms, and lays down the rules for the system of government in the transitional phase. It will remain in force until a new Parliament and a new head of state are elected.

Mr Sultan also mentioned that Parliamentary elections were scheduled for September 2011 (i.e. within six months of the announcement of the results of the referendum). The newly elected Parliament would then form a Constitutional Assembly to draft a proposal for a new constitution.

11. Montenegro

Draft amendments to the constitution and to three laws relating to the judiciary and the prosecution service

M Tuori presented the draft opinion on the draft amendments to the Constitution of Montenegro ([CDL-REF\(2011\)033](#)) relating to the judiciary and the prosecution service, prepared following the visit to Montenegro on 9-10 June 2011. He recalled that the matter of the conformity of the Constitution of Montenegro with European standards had previously been assessed by the Commission which had concluded that certain amendments were required with regard to the judges (in particular the appointment of the President of the Supreme Court) and, most notably, to the manner of appointment of the prosecutors.

Mr Tuori explained that three draft laws on the judicial council, on the courts and on the prosecutors had initially been prepared by the Minister of Justice with a view to improving the situation and strengthening the independence and accountability of the judges and prosecutors without amending the constitution. The rapporteurs wished to underline that the best way of achieving these goals was to amend the constitution, mere laws being insufficient. Indeed the Minister of Justice had subsequently prepared draft constitutional amendments.

These amendments (notably the appointment of the president of the Supreme Court by parliament upon the proposal of the Judicial Council; an equal number of judges and lay members on the Judicial Council; the appointment of lower prosecutors for life) represented steps in a good direction, and as such deserved a positive assessment. Nevertheless, it was the opinion of the rapporteurs that further improvements were needed in order to overcome the doubt or at least impression that the judiciary was under political control and to reach a good balance between the need to ensure the independence of the judiciary while avoiding an autocratic self-government of judges. In particular, the rapporteurs had made specific, innovative proposals concerning the composition of the Judicial Council.

Mr Ranko Krivokapic, Speaker of the parliament of Montenegro, noted the very fruitful co-operation between his country and the Venice Commission, starting with the referendum on independence. In 2007 the Commission had acknowledged that the situation in Montenegro did not appear to be ripe for a full reform of the judiciary and prosecution service and that some time would be necessary. He expressed the view that that time had still not come; Montenegro was yet to find an appropriate manner to ensure independence and, at the same time, accountability and democratic legitimacy of the judiciary. Constitutional amendments required a two-thirds majority which would not be easily found. However, he assured the Commission that he would do his best, also thanks to the influence which the Venice Commission was able to

exert in Montenegro, to persuade parliament to move forward in the direction indicated by the Commission.

The Commission adopted the opinion on draft amendments to the Constitution of Montenegro as well as on draft amendments to the law on courts, the law on the State Prosecutor's Office and the Law on the Judicial Council of Montenegro (CDL-AD(2011)010).

Draft electoral legislation of Montenegro

Mr Kask presented the opinion on the draft electoral legislation of Montenegro ([CDL-REF\(2011\)021](#)), previously endorsed by the Council for Democratic Elections. He stated that the Venice Commission and the OSCE/ODIHR had examined a previous version of this law in 2010; this revised version took into account most of their recommendations and indeed deserved a positive assessment. In particular, the provisions relating to the representation of minorities represented an original and balanced system with no reserved seats but with less strict thresholds taking into account the demographic weight of minority groups. This system complied with the applicable standards. Some amendments were recommended. As the parliament of Montenegro planned to adopt these amendments before 31 May 2011, the draft opinion had already been transmitted to the authorities and was now presented to the Commission for endorsement.

Mr Krivokapic informed the Commission that the parliament had failed to adopt the amendments within the planned time-frame. Disagreement had arisen on three points: the lack of a quantitative criterion in the definition of minorities (at some point in time, it had been fixed at less than 16 per cent of the population); the length of time during which non citizens residing in Montenegro could take part in the elections and the provision on the maximum number of seats to which aggregated lists may aspire. Mr Krivokapic explained that in reality there was no substantial disagreement on the fundamental features of the amendments in question, but it was a matter of political negotiation. He was confident that parliament would be able to reach the required a two-thirds majority within the new time-limit of 31 July 2011. The adoption of this law was a pre-condition to European integration.

The Commission endorsed the Joint Opinion on the Draft Law on amendments to the law on election of councillors and members of parliament (CDL-AD(2011)011).

12. Armenia

Draft law on making a supplement to the penitentiary code of Armenia

Ms Šimácková introduced the draft opinion on the draft law on making a supplement to the penitentiary code of Armenia ([CDL-REF\(2011\)020](#)).

The Armenian authorities' initiative to regulate through a supplement to the Penitentiary Code, in the absence of specific domestic legislation in this field, the possible restriction by public authorities of the right to the respect of the correspondence of detainees was to be welcomed. It was commendable that the draft drew on the applicable international standards and that its underlying principles were those enshrined in Article 8 of the ECHR, and that, according to proposed provisions, intervention in the above right of the convicted person required a judicial decision. It was necessary however for courts, in ruling on each proposed restriction of the privacy of correspondence, to duly take into account the requirements of necessity and proportionality and this ought to be included explicitly in the new provisions.

To be fully in line with the ECHR requirements and the relevant ECtHR case law, further improvements of the Draft law were nevertheless needed.

The Commission adopted the opinion on the Draft law Making a Supplement to the Penitentiary Code of Armenia (CDL-AD(2011)024), with one amendment.

Draft new electoral code

The representative of the OSCE/ODIHR introduced the draft joint opinion on the new electoral code (CDL-REF(2011)009) which had been endorsed by the Council for Democratic Elections at its meeting on 16 June 2011. This draft opinion had been sent to the parliament of Armenia in May 2011, before the adoption of the new code which was planned by parliament to take place one year before the next parliamentary elections foreseen in May 2012. She explained that the opinion referred to a version of the draft code which had been subsequently amended following the visit by a delegation of the Venice Commission and ODIHR to Yerevan in May 2011. The new code had been amended in the meantime but the English translation of the final version was not yet available.

The ODIHR representative underlined that several positive amendments had been made following previous joint opinions by the Venice Commission and the OSCE/ODIHR, which was commendable. In particular, quotas aimed at gender balance had been introduced, together with the clarification of the grounds for invalidating the results of elections. She reiterated and underlined however that, while the new code would represent a good legal text, political will would be crucial for its good faith implementation.

Mr Davit Harutyunyan, Chairman of the Standing Committee on State and legal affairs of Armenia, informed the Commission that all stakeholders had been consulted in the preparation of the new electoral code; the draft amendments had been published on the website of parliament and all proposals received had been duly examined by the working group. The draft opinion by the Venice Commission and the OSCE/ODIHR had also been published and had played an important role in the discussions. The working group had followed several recommendations of the Venice Commission and the OSCE/ODIHR, notably that the signed voters' lists should not be published. Further amendments had been made following the public discussion of 4 May 2011 in which a Venice Commission and ODIHR delegation had taken part. The amendments had subsequently been adopted and would be sent to the Venice Commission for a final opinion as soon as the translation becomes available.

The Commission endorsed the joint opinion by the Venice Commission and the OSCE/ODIHR on the draft electoral code of Armenia (CDL-AD(2011)021).

13. Hungary

The Commission examined the draft opinion on the new Constitution of Hungary ([CDL-REF\(2011\)019](#)), drawn up at the request of the Monitoring Committee of the PACE. In this context, an exchange of views was held with the representatives of the Hungarian authorities, in particular Mr Jozsef Szàjér, MEP, one of the main authors of the new text of the Constitution.

The New Hungarian Constitution, adopted by the Hungarian Parliament on 18 April 2011 with the votes of the ruling coalition majority and signed by the President of Hungary on 25 April 2011, will enter into force on 1 January 2012. At its 86th Plenary Session, at the request of the Hungarian authorities, the Commission had already adopted an opinion on three legal questions arising in the process of drafting the new Constitution of Hungary ([CDL-AD\(2011\)001](#)). In its Opinion, in addition to providing its legal advice on the three issues

submitted to it, the Commission had expressed concern with regard to the lack of transparency of the constitution-making process and its very tight timeframe, the absence of dialogue between the majority and the opposition, and the insufficient opportunities for an adequate public debate.

Mr Velaers introduced the opinion and, while reiterating the above-mentioned remarks related to the constitutional process, welcomed the adoption of the new Constitution of Hungary, aiming to establish a constitutional order based on the principles of democracy, the rule of law and the protection of fundamental rights. This represented a major step for the current ruling coalition and for Hungary. While consolidating positive features of the still valid Hungarian Constitution and introducing new positive developments, such as the individual constitutional complaint, the adoption of the new Constitution represented the first step in a broader process to establish a comprehensive and coherent new constitutional order. This process included the adoption or amendment of numerous pieces of legislation, as well as new institutional arrangements. It was essential for Hungary to make sure that all subsequent legislative and other measures would be fully in line with the applicable international standards and based on the largest consensus possible.

Concern was raised, *inter alia*, with regard to: the Preamble and its legal significance, in particular for the interpretation of the Constitution; a number of important concepts and values underlying the Constitution (such as the concept of nation and the clause on the protection of Hungarians living abroad); the constitutional guarantees (and related limitations) for the protection of individual rights and freedoms; the limitation of the powers of the Constitutional Court on taxation and budgetary matters and the prominent role given to the Budget Council in the adoption of the State budget, as well as the place of autonomous regulatory bodies in the Hungarian state's system of checks and balances; the new regulations for the functioning of local self-government.

Special attention was given to the extensive use of cardinal laws, in the new Constitution, for the regulation of important issues, such as fundamental rights, the operation of the judicial power and other key issues. In the Commission's opinion, this is of particular significance in the light of the current political situation prevailing in Hungary, where the ruling coalition holds a two-thirds majority in Parliament.

In his intervention, Mr Szàjer provided additional information and clarifications on the process having led to the adoption of the new Constitution, including public consultation held on certain subjects regulated by the Constitution. Mr Szàjer also addressed certain issues which raised questions or criticism by the Commission in its Opinion and expressed the view that the Commission ought to have paid increased attention, in its analysis of the new Constitution, to the country's specific legal culture and traditions and their distinctive features.

The Commission took note and endorsed a number of amendments proposed by the rapporteurs, in order to reflect better the most recent clarifications received on issues raised in the draft opinion.

The Commission adopted the opinion on the new constitution of Hungary, with amendments (CDL-AD(2011)016).

14. Bulgaria

Opinion on the sixth revised Draft Act on Forfeiture of Assets Acquired through Criminal Activity or Administrative Violations

Mr Neppi Modona presented the draft opinion which was the result of more than one year of fruitful co-operation between the Commission and the Bulgarian authorities. The Commission

had examined six versions of this important and complex piece of legislation, and taken part in three meetings - one in Strasbourg and two in Sofia. He explained that the main difference between various versions of this Draft Law related to its scope of application i.e. the assets whose sources may be examined by the Commission for the Establishment of Assets Acquired through Criminal Activity or Administrative Violations (CEACAV), and the grounds for initiating the examination phase before the CEACAV. The issue of the scope of application and the procedural guarantees during the proceedings was essential for the assessment of the compatibility of the Draft Law with human rights standards. Another important issue related to the rules on the evidential threshold for requesting forfeiture before a Court; on the requirement to establish the lack of correspondence between the assets and the net income of a person and his or her family members; and on the right to defence in forfeiture proceedings.

The sixth revised Draft Law now under consideration represented a great improvement, as most of the recommendations previously made had been taken into account. Mr Neppi Modona also underlined the role of the Draft Law as a critical tool for combating corruption and organised crime in Bulgaria, and expressed the hope that it will be adopted by the Bulgarian Parliament very soon.

Ms Popova, Minister of Justice of Bulgaria, thanked the Commission for the excellent co-operation and stated that a law such as the Bulgarian Draft Law on Forfeiture on Assets Acquired through Criminal Activity or Administrative Violations was a critical measure for any country committed to fighting corruption and organised crime. She informed the Commission that the Draft Law had been agreed upon by the Bulgarian Council of Ministers, and that it would be submitted to the Parliament shortly.

The Commission adopted the opinion on the Draft Law on Forfeiture on Assets Acquired through Criminal Activity or Administrative Violations with amendments (CDL-AD (2011)023).

Avis de la Commission de Venise et de l'OSCE/ODIHR sur le code électoral unifié de la Bulgarie

La Commission examine, en vue de son adoption, le projet d'avis conjoint de la Commission de Venise et de l'OSCE/ODIHR) sur le code électoral unifié de la Bulgarie ([CDL-REF\(2011\)008](#)), préalablement adopté par le Conseil des élections démocratiques à sa réunion du 16 juin 2011.

M. Kask présente l'avis en soulignant tout d'abord que le code électoral de Bulgarie a été adopté au mois de janvier 2011 par l'Assemblée nationale de Bulgarie et qu'il s'agit du premier code électoral unifié de la Bulgarie, concernant dès lors toutes les élections bulgares y compris pour le Parlement européen. Le code électoral a été évalué très positivement par les rapporteurs, dont une délégation s'est rendue en Bulgarie les 12 et 13 mai 2011. M Kask explique que par un arrêt du 4 mai 2011, la cour constitutionnelle bulgare a invalidé certaines dispositions du code. Suite à cette décision, l'Assemblée nationale de Bulgarie a adopté le 2 juin 2011 des amendements. Par ailleurs, dans ses remarques conclusives, la Commission de Venise et l'OSCE/ODIHR recommandent à terme, c'est-à-dire après les prochaines élections, de modifier la Constitution pour préciser les droits électoraux des personnes qui purgent une peine d'emprisonnement et des ressortissants titulaires d'une double nationalité. M. Kask précise en outre quelques points du projet d'avis qui recommandent une amélioration du cadre législatif, en particulier la question de l'enregistrement des candidats indépendants dont le seuil à atteindre est élevé, alors que le Code de bonne conduite en matière électorale recommande un seuil maximum de 1 %. M. Kask soulève également des carences dans le code concernant les recours et certains délais pour effectuer des recours. Le vote par internet posait des problèmes également mais les dispositions concernées ont été invalidées par la Cour constitutionnelle.

Le représentant de l'OSCE/BIDDH présente ensuite les amendements proposés au projet d'avis, qui prennent en compte dans le projet d'avis la décision de la Cour constitutionnelle et les amendements adoptés par l'Assemblée nationale (CDL-REF(2011)030).

M Tanchev explique enfin les tenants et aboutissants de la décision rendue par la Cour constitutionnelle de Bulgarie qu'il préside et indique que la Cour est satisfaite par l'action entreprise par l'Assemblée nationale de Bulgarie, amendant les dispositions déclarées inconstitutionnelles par la Cour.

M. Nikolov, député de l'Assemblée nationale de Bulgarie et vice-président de la Commission des affaires juridiques de l'Assemblée, souligne que les recommandations émises dans l'avis sont importantes et que l'Assemblée nationale de Bulgarie a tenu compte de celles-ci. Il rappelle que ces recommandations ne requièrent pas d'amendements à la Constitution. Enfin, M. Nikolov indique que ce nouveau code électoral permettra l'organisation d'élections démocratiques en Bulgarie.

La Commission adopte l'avis sur le code électoral de Bulgarie avec quelques amendements ([CDL-AD\(2011\)013](#)).

15. Kazakhstan

Ms Achler presented the draft joint opinion by the Venice Commission and the OSCE/ODIHR on the Constitutional Law on the Judicial System and the Status of Judges of Kazakhstan (CDL-REF(2011)027). The Chairman of the Supreme Court of Kazakhstan had requested the OSCE and the Venice Commission to provide an opinion on the Law in force as a basis for the preparation of amendments to it. The draft opinion made the following key recommendations: to provide for a balanced composition of the High Judicial Council, including a substantial number of judges elected or at least proposed by judges from all instances; a limitation of the discretion of the President when s/he disagreed with proposals for judicial appointments made by the Council; to reinforce the principle of irremovability of judges; to ensure that judges could be dismissed only after fair disciplinary proceedings; reform the system of suspension, termination of powers and discharge of judges; to make a clear distinction between evaluation procedures and disciplinary proceedings and to ensure the independence of disciplinary boards. Ms Achler also presented two amendments in paragraphs 29 and 41 of the draft opinion, which had been proposed by Mr Varzelashvili.

The Commission adopted the joint opinion by the Venice Commission and the OSCE/ODIHR on the Constitutional Law on the Judicial System and the Status of Judges of Kazakhstan (CDL-AD(2011)012).with amendments (CDL-AD(2011)014).

16. Kyrgyzstan

Constitutional Chamber of the Supreme Court

Mr Vardzelashvili presented the draft opinion on the draft Constitutional Law on the Constitutional Chamber of the Supreme Court of Kyrgyzstan (CDL-REF(2011)018). Following the rapporteurs' comments and a visit of a Commission delegation to Bishkek, the draft had been amended, adopted by Parliament and enacted on 14 June. The opinion had, however, been prepared on the basis of the draft law. In its opinion on the draft Constitution of Kyrgyzstan, the Commission had expressed fears of a retreat of constitutional justice because the Constitutional Court had been dissolved. However, the present draft Law provided the Constitutional Chamber with a strong and independent position, including budgetary independence, which was welcomed. Individual access to the Chamber was a positive element,

even though it should be restricted to persons whose rights had been violated rather than providing an *actio popularis*. A number of proposals made by the rapporteurs had been taken up in the final text adopted: while the draft did not provide for standards against which constitutional amendments could be reviewed, the adopted Law provided such review according to human rights standards, basic principles and on procedural grounds. A provision on (self-)recusal had been amended enabling also parties to challenge a judge and avoiding recusals when this would lead to a lack of quorum. Time limits had been extended. Other recommendations were *inter alia* to provide for discretion to the Chamber to continue proceedings if a challenged act had lost force as a basis for the annulment of individual acts based on an unconstitutional law.

Ms Skripkina, Chair of the Committee on Constitutional Legislation of the Kyrgyz Parliament, thanked the Commission not only for the co-operation on this issue but also for the excellent co-operation in the past. She informed the Commission that the three laws examined by the Commission were part of a package of five judicial laws, all of which had been enacted on 14 June. Ms Musabekova pointed out that the main objective of the drafters had been to keep the full functionality of the Constitutional Chamber as compared to the previous Constitutional Court. Most of the Commission's recommendations had been taken up by Parliament, including time-limits, judges' recusal or the possibility to request *amicus curiae* opinions from international bodies such as the Venice Commission. Criteria for the review of constitutional standards had already existed in the past but they were now spelled out upon recommendation by the Venice Commission.

The Commission adopted the Opinion on the draft Constitutional Law on the Constitutional Chamber of the Supreme Court of Kyrgyzstan (CDL-AD(2011)018).

Status of Judges

Mr Gstöhl presented the draft Opinion on the draft Law on the Introduction of Changes to the Constitutional Law on the Status of Judges of Kyrgyzstan (CDL-REF(2011)015), drawn up on the basis of comments by Mr Hamilton and himself. Due to numerous referrals, the draft was only understandable in the context of the other draft laws in the judicial reform package. The draft opinion welcomed the draft as a step to increasing the qualification and reputation of judges. The provisions referring to the binding nature of judicial acts and the exclusion of party membership for judges were welcomed. The provisions on the dismissal of judges were too generic and vague, however. The issue of irremovability of judges was critical because a system of rotation of judges was envisaged and political influences needed to be excluded in this respect. Immunity should be functional only.

Mr Hoffmann-Riem suggested removing recommendations on written examinations and written recommendations for candidate judges. Ms Letova agreed with the opinion and explained that recommendation letters would not lead to abuse.

The Commission adopted the Opinion on the draft Law on the Introduction of Changes to the Constitutional Law on the Status of Judges of Kyrgyzstan (CDL-AD(2011)017).

Council for the Selection of Judges

Mr Esanu presented the draft opinion on the draft law on the Council for the Selection of Judges (CDL-REF(2011)016). Mr Esanu pointed out that the Kyrgyz Constitution did not provide for one body competent for judicial appointments and careers but for two, the Council of Judges and the Council for the Selection of Judges. The standards applicable to judicial councils would apply to either of these bodies. The Council for the Selection of Judges had only a very low number of judges: 1/3 of the 24 members. The other 16 members are to be elected

from among representatives of civil society: 8 members elected by the parliamentary majority, 8 by the opposition. 8 judges out of 24 would not constitute a “substantial part, if not a majority” of judges elected by their peers. In addition, there was no provision that the 8 judges should come from all levels of the judiciary. A remedy to the low number of judges in the Council would be to oblige the majority and the opposition to elect judges as part of their quota. It was important that the members of the Council were not members of political parties. The relations between the Council and the President should be clarified. The President should only act as a “notary” verifying whether the correct procedure was followed. Finally, the Council members were expected to act pro bono; not even their costs were to be reimbursed. This would heavily hamper the Council’s work.

Ms Letova informed the Commission that all judges needed to be reappointed. In the process of drafting the Constitution the composition of the Council for the Selection of Judges had been intensely discussed because the people had no trust in the judiciary. Consequently, the Constitution provided that only one third should be judges and two thirds should come from the civil society. This provision might be reviewed at a later stage. The adopted Law provided that members of political parties could not become members of the Council. The President only acted as a notary and would have to motivate his or her veto against the nomination of a judge. The Council could even renominate the same candidate. The pro bono participation of Council members was a budgetary problem but the Council Secretariat would now be placed under the authority of the judicial department controlled by the Supreme Court. Ms Letova concluded that 90 per cent of the recommendations had been implemented. Within the next few weeks the Council would be established.

The Commission adopted the Opinion on the draft Law on the Council for the Selection of Judges (CDL-AD(2011)019).

Presidential and Parliamentary Elections, Electoral Commissions and elections to local governments

Mr Endzins presented the draft joint opinion by the Venice Commission and the OSCE/ODIHR on the draft law on Presidential and Parliamentary Elections of the Kyrgyz Republic ([CDL-REF\(2011\)017](#)), on the draft law on Electoral Commissions of the Kyrgyz Republic ([CDL-REF\(2011\)023](#)) as well as on the draft law on elections to local governments ([CDL-REF\(2011\)022](#)). The draft joint opinion had been adopted by the Council for Democratic Elections at its meeting on 16 June 2011.

Mr Endzins informed the Commission that the text of the draft opinion was based on the initial set of informal comments provided by the OSCE/ODIHR and the Venice Commission in April 2011 and sent to the authorities. The joint opinion commented on the versions of the three draft laws, which included amendments through March and April 2011. The law on national elections and the law on election commissions had been adopted by the parliament on 12-13 May and sent to the President, who did not sign the laws and returned them to the parliament in June.

The rapporteur noted that while a number of amendments to the draft laws marked some progress, several concerns remained since the text introduced significant limitations to certain civil and political rights. He also pointed to a number of shortcomings in the design of the electoral system, notably the electoral thresholds (national and regional). Other areas in which further improvement was required included limitations on voting rights, limitations on the right to be a candidate, provisions regulating the formation of election commissions at various levels; the process for filing and adjudicating complaints and appeals to protect suffrage rights.

The Commission was informed by the representatives of the authorities that after the president of the Kyrgyz Republic had returned the draft laws to the parliament, the corresponding working group in charge of electoral legislation had resumed its work on the text.

The Commission expressed its hope that the recommendations of the joint opinion would be taken into account by the parliament and informed the representatives of the Kyrgyz Republic that it remained at the disposal of the authorities for further co-operation in the electoral field.

The Commission took note of the latest developments in the electoral field in the Kyrgyz Republic and adopted the joint opinion by the Venice Commission and the OSCE/ODIHR on the draft law on Presidential and Parliamentary Elections of the Kyrgyz Republic, on the draft law on Electoral Commissions of the Kyrgyz Republic as well as on the draft law on elections to local governments (CDL-AD(2011)025).

17. Serbia

The Commission adopted without debate the Interim Opinion on the Draft Decisions of the High Judicial Council and of the State Prosecutorial Council on the Implementation of the Laws on the Amendments to the Laws on judges and on the Public Prosecution of Serbia (CDL-AD(2011)015).

18. Belarus

Mme Thorgeirsdottir présente le projet d'avis sur la compatibilité avec les normes universelles des droits de l'homme d'un avertissement du Ministère de la Justice de Belarus adressé au Comité Helsinki du Belarus ([CDL-REF\(2011\)028](#)). Cet avis fait suite à une demande, en date du 9 mars 2011, du Président de la Commission des questions politiques de l'Assemblée parlementaire du Conseil de l'Europe.

Après une brève présentation du contexte politique dans lequel s'inscrit l'avertissement du Ministère de la Justice du Belarus, Mme Thorgeirsdottir rappelle que cet avis fait suite à un précédent avis adopté lors de la 85^e session plénière (17-18 décembre 2010) sur un avertissement du Ministère de la Justice à l'encontre de l'Association biélorussienne des Journalistes (CDL-AD (2010) 053rev).

L'avertissement du Ministère de la Justice comporte deux volets : un reproche au Comité Helsinki d'avoir envoyé une communication au Rapporteur Spécial des Nations Unies concernant l'impossibilité ou la difficulté des manifestants suite aux élections présidentielles d'avoir accès à un avocat. Deuxièmement l'avertissement demande à l'association de faire une sorte de contre communiqué.

Sur le plan juridique interne, l'avertissement a un impact fort dans la mesure où si un deuxième avertissement est émis pour les mêmes faits, le Comité Helsinki, qui est la seule organisation de défense des droits de l'homme encore enregistrée au Belarus, peut être dissout.

L'avis analyse l'avertissement à la lumière du Pacte international des droits civils et politiques que le Belarus a ratifié en 1973 et de la CEDH. Les droits visés sont ceux relatifs à la liberté d'association et la liberté d'expression. L'avis conclut à la violation des articles du Pacte International des Droits Civils et Politiques et de la CEDH (22 PIDCP et 11 CEDH) relatifs à la liberté d'association et à la à la liberté d'expression (19 PIDCP et 10 CEDH). Ces droits sont d'une importance cruciale dans une société démocratique et toute restriction à ces droits doit être strictement justifiés.

L'avis prend soin également de relever explicitement dans ses conclusions que l'avertissement constitue une menace illégitime sur l'existence et les activités d'une organisation chargée de promouvoir et de défendre les droits de l'Homme et rappelle que le

Belarus en tant que partie au Pacte international des Droits Civils et Politiques a une obligation positive de respecter les voies dissidentes mais également de protéger les organisations de défense des droits de l'Homme.

La Commission adopte l'avis sur la compatibilité avec les normes universelles des droits de l'homme d'un avertissement du Ministère de la Justice de Belarus adressé au Comité Helsinki du Belarus (CDL-AD(2011)026) mais décide de ne pas le rendre public jusqu'à l'épuisement des voies de recours internes*.

19. Other Constitutional Developments

There was no discussion under this item.

20. Rapport de la réunion du Conseil des élections démocratiques (16 juin 2011)

En l'absence du président du Conseil des élections démocratiques, M. Mifsud Bonnici informe la Commission des résultats et des conclusions de la réunion du 24 mars 2011.

Tout d'abord, la Commission est invitée à adopter le projet d'avis sur la nécessité d'un code de bonne conduite dans le domaine du financement des campagnes électorales. Après une présentation du projet d'avis, M. Esanu indique que des amendements ont été apportés depuis les discussions tenues lors de la session précédente, prenant en compte les recommandations du Groupe d'Etats contre la corruption du Conseil de l'Europe (le GRECO). Le projet d'avis conclut qu'il pourrait être nécessaire d'effectuer une étude sur le mauvais usage des ressources administratives durant les campagnes électorales, ce qui sera fait par ailleurs.

M. Davit Harutyunyan, membre de l'Assemblée parlementaire du Conseil de l'Europe, président de la délégation arménienne à l'APCE et à l'origine de cette demande d'étude par l'APCE, souligne que l'utilisation des ressources de l'Etat en périodes électorales est une question cruciale et que le rôle de l'Etat n'est pas pris en considération. En outre, il y a une tendance à un amoindrissement des ressources disponibles. Il précise enfin qu'il n'y a pas d'étude sur un seuil « raisonnable » en la matière ni concernant le financement des campagnes par les nouvelles technologies, telles que les SMS ou le système *Paypal*, notamment. M. Harutyunyan précise qu'une étude plus approfondie serait utile avec une définition des ressources administratives incorporant ces différentes notions.

La Commission adopte l'avis sur la nécessité d'un code de bonne conduite dans le domaine du financement des campagnes électorales ([CDL-AD\(2011\)020](#)).

M. Mifsud Bonnici informe ensuite la Commission des récentes activités réalisées en Albanie et en Moldova, dans le cadre des élections locales respectives, ainsi qu'en « ex-République yougoslave de Macédoine » où se sont déroulées des élections législatives anticipées le 5 juin 2011. Il indique qu'est assuré un suivi des Lignes directrices sur un statut internationalement reconnu des observateurs d'élections, adoptées par la Commission de Venise en décembre 2009 (CDL-AD(2009)059). Ces Lignes directrices seront soumises au Comité des ministres du Conseil de l'Europe en vue de l'adoption, le cas échéant, d'une résolution fondée sur ces lignes directrices.

M. Mifsud Bonnici informe la Commission de la tenue de la 8^e Conférence européenne des administrations électorales intitulée « Les élections dans un monde en mutation » et qui s'est tenue à Vienne les 12 et 13 mai 2011. Cette conférence a été un succès, en réunissant environ

* L'avis a été par la suite rendu public le 6 juillet 2011.

30 délégation nationales d'Etats européens et non européens sur des thèmes comme les médias sociaux et le secret du vote, l'influence des médias modernes sur l'électorat, le droit à la liberté de vote et les effets de l'ère numérique, la façon dont la technologie moderne améliore le cycle électoral, les nouvelles stratégies d'organisation d'élections sans heurts, l'avenir des bureaux de vote compte tenu des nouveaux moyens de vote, le vote électronique en 2011, les moyens d'apaiser les inquiétudes et de préserver la confiance et les mesures possibles aux fins de l'observation d'élections par voie électronique.

21. Rapport sur le vote à l'étranger

La Commission examine, en vue de son adoption, le rapport sur le vote à l'étranger, qui a été adopté par le Conseil des élections démocratiques à sa réunion du 16 juin 2011.

M. Trócsányi présente le projet de rapport en indiquant que celui-ci a désormais, suite aux amendements apportés depuis la dernière session, une approche plus positive sur le vote à l'étranger. M. Trócsányi présente ensuite plus spécifiquement un certain nombre d'amendements supplémentaires, proposés en accord avec Mme Durrieu et informe la Commission des remarques présentées par Mme Omejec, qui seront largement prises en compte.

La Commission charge M. Trócsányi de faire des propositions d'amendements suite aux discussions tenues et au secrétariat de les intégrer dans la version finale de l'avis.

La Commission adopte le rapport sur le vote à l'étranger avec des amendements ([CDL-AD\(2011\)022](#)).

22. Déclaration interprétative révisée du code de bonne conduite en matière électorale relative à la participation des personnes handicapées aux élections

La Commission tient un échange de vues avec M. Oliver Lewis, directeur exécutif du Centre de Défense des Droits des Personnes Handicapées Mentales au sujet de la déclaration interprétative révisée du Code de bonne conduite en matière électorale relative à la participation des personnes handicapées aux élections ([CDL\(2011\)041](#)), préalablement discuté au Conseil des élections démocratiques à sa réunion du 16 juin 2011 (voir également le document d'information [CDL\(2011\)043](#)).

M. Oliver Lewis explique la situation en matière de droits politiques pour les personnes handicapées mentales et recommande d'être prudent quant aux stéréotypes sur les personnes handicapées mentales. Le droit de vote est un droit très fort et priver les personnes handicapées de ce droit pourrait accentuer ces idées préconçues. M. Lewis rappelle que la convention des Nations Unies sur les droits des personnes handicapées ne fait pas de distinction entre les personnes handicapées physiques ou mentales. L'un des éléments porteurs de la Convention des Nations Unies est le constat que les personnes handicapées sont trop souvent en dehors du processus démocratique. Le Centre de Défense des Droits des Personnes Handicapées Mentales défend ainsi des droits substantiels et œuvre à l'ouverture à la participation politique des personnes handicapées. M. Lewis rappelle également la position du Commissaire aux droits de l'Homme du Conseil de l'Europe, qui recommande l'absence de toute restriction au droit de vote des personnes handicapées. M. Lewis soulève la question de l'applicabilité et pertinence d'un contrôle de la capacité de jugement de citoyens non seulement aux personnes handicapées mais également aux citoyens votant pour des partis extrémistes, ou à d'autres catégories de citoyens. M. Lewis insiste sur le caractère traumatique de la privation du droit de vote et sur l'importance de compter les voix de chaque individu. En conclusion, M. Lewis demande d'adopter la nouvelle proposition de rédaction du paragraphe 2.

Lors de la discussion au sein du Conseil des élections démocratiques, essentiellement deux positions se sont dégagées : l'une soutient que la Déclaration interprétative devrait reconnaître le droit de vote à toute personne handicapée, sans distinction de handicap ni possibilité de priver la personne de son droit de vote par une décision judiciaire individuelle ; l'autre position soutient que la Déclaration devrait souligner qu'il devrait être possible qu'une personne puisse être privée de ses droits politiques par décision judiciaire individuelle s'il s'avère que ses facultés mentales ne lui permettent pas de former un choix individuel. M. Mifsud Bonnici rappelle que les personnes handicapées ne devraient pas être discriminées. La capacité de voter devrait être jugée sur des cas d'espèce et un citoyen, avec ou sans handicap, pourrait le cas échéant se voir priver du droit de vote, mais indépendamment de toute question de handicap. M. Jaklic indique qu'il a participé à la réunion organisée à Venise le 15 juin par le Centre de Défense des Droits des Personnes Handicapées Mentales et indique qu'il a été possible de trouver un compromis sur la formulation d'un paragraphe révisé de la Déclaration interprétative.

Le président de séance, M. Paczolay, indique qu'il faut trouver une décision procédurale pour conclure la question. Il rappelle que la Déclaration interprétative dans sa version initiale a déjà été adoptée par la Commission ([CDL-AD\(2010\)036](#)) et qu'elle restera en vigueur tant qu'une version révisée n'aura pas été adoptée.

Plusieurs membres et participants prennent la parole sur le sujet.

A la lumière de la discussion, M. Paczolay, président de séance, propose de reporter le débat à une prochaine réunion de la Commission, ce qui est accepté.

23. Report of the meeting of the Scientific Council (16 June 2011)

Ms Flanagan informed the Commission that the Scientific Council had approved the organisation of two conferences:

1. Conference on Constitutional Design (Helsinki, 24-25 May 2012) in co-operation with the Helsinki Law Faculty and its Centre of Excellence and IACL. The seminar would consist of three sessions, each with two speakers and two commentators:
 - a. Constitutionalism: theoretical perspectives (organised by the Law Faculty of Helsinki)
 - b. Constitutional design in Europe (organised by the Venice Commission)
 - c. Constitutional design: transnational and global perspectives (organised by IACL)
2. Conference on the Rule of Law in co-operation with the Bingham Centre for the Rule of Law (presided by Mr Jowell) and the UK Foreign Office which will take place in London in February 2012.

The compilations of Venice Commission opinions and reports on the Protection of Minorities and on Constitutional Justice would be systematically up-dated by the Secretariat on the Commission's web site following the adoption of relevant opinions and reports.

The Commission took note of the compilations of Venice Commission opinions and reports on the Protection of Minorities (CDL(2011)018) and on Constitutional Justice (CDL(2011)048).

24. Report of the meeting of the Sub Commission on Democratic Institutions (16 June 2011)

Mr Ergun Özbudun informed the Commission of the discussion held during the meeting of the Sub-Commission with regard to the study on the role of extra-institutional actors in a

democratic system, to be prepared in connection with a request by the Parliamentary Assembly (Resolution 1744(2010)).

The members were informed that Mr Raj Chari, expert, had presented a report on “the legal framework for the regulation of lobbying in the Council of Europe member States” (see document [CDL-DEM\(2011\)002](#)). In addition, a proposed outline ([CDL-DEM \(2011\)001](#)) for the forthcoming Venice Commission study, prepared by Mr van Dijk, was presented by the Secretariat. These presentations were followed by a brief exchange of views, with Mr Raj Chari, on the main challenges faced in various European states in this field. The Sub-Commission discussed, among other aspects, the advantages and the potential dangers of the institutionalized lobbying, a more recent trend in the European democratic societies. The members of the Commission were encouraged to participate in the preparation of the future study and, for those having a specific interest in this topic, to put themselves forward as Rapporteurs.

25. Other business

Latin America

Ms Maria del Carmen Alanis Figueroa informed the Commission on the results of the meeting of members interested in co-operation with Latin America. The working group on Latin America had met on 16 June 2011 with the aim of discussing possible areas of co-operation between members from Latin American countries and the Commission and preparing concrete proposals for activities in 2011. The group met on the initiative of the four Latin American member States of the Commission: Brazil, Chile, Mexico and Peru.

The working group had been informed about the recent activities involving Latin American countries which had taken place in 2011, notably:

- the seminar which took place in Bolivia on the “role of prosecutors in a democratic society”, Sucre, 17 and May 18, 2011 (following the adoption of the Opinion on the Draft Organic Law of the Public Prosecutor's Office of Bolivia, Venice, 25-26 March 2011, requested by the European Union in the framework of the co-operation programme with Bolivia);
- the publication of the Code of good practice in electoral matters in Spanish by the Electoral Tribunal of Mexico;
- the participation of Latin American electoral management bodies at the European Conference of Electoral Management Bodies (EMB) in Vienna, on 12 – 13 May 2011.

The Working group also held an exchange of views on planned future activities:

- request by the Constitutional Court of Peru for an *amicus curiae* brief from the Venice Commission concerning the on-going proceedings in the case of El Fronton, regarding the applicability of punishments for crimes against humanity.
- conference organised with the Constitutional Court of Bolivia on the guiding principles of constitutional justice with a particular focus on indigenous justice (Santa Cruz de La Sierra, 7 and 8 July);
- possible co-operation with the association of Latin American electoral management bodies UNIORE, notably in preparing a joint meeting of representatives of UNIORE and European Electoral Management Bodies which could be organised in 2012;
- intention of the Constitutional Court of Chile to translate and publish the standard-setting documents of the Venice Commission in the field of constitutional justice and the invitation to

attend a colloquium on the challenges of constitutional justice that would take place in Chile in September 2011.

The working group proposed to re-establish the Sub-Commission on Latin America.

The Commission decided to re-establish the Sub-Commission on Latin America with Ms Alanis as Chair.

26. Dates of the next sessions and proposals for dates of sessions in 2012

The schedule of the remaining sessions for 2011 was confirmed as follows:

| | |
|----------------------------------|---------------------|
| 88 th Plenary Session | 14-15 October 2011 |
| 89 th Plenary Session | 16-17 December 2011 |

In addition, the Commission approved the schedule of sessions for 2012 as follows:

| | |
|----------------------------------|---------------------|
| 90 th Plenary Session | 16-17 March 2012 |
| 91 st Plenary Session | 15-16 June 2012 |
| 92 nd Plenary Session | 12-13 October 2012 |
| 93 rd Plenary Session | 14-15 December 2012 |

[Link to the list of participants](#)